

**Managed Risk Medical Insurance Board
November 5, 2007, Public Session**

Board Members Present: Cliff Allenby, Sophia Chang, M.D., M.P.H., Richard Figueroa, M.B.A

Ex Officio Members Present: Ed Heidig (on behalf of the Secretary for Business, Transportation and Housing), Ruth Liu (on behalf of the Secretary for California Health and Human Services Agency), and Jack Campana

Staff Present: Lesley Cummings, Laura Rosenthal, Janette Lopez, Adrienne Thacker, Maria Angel

Chairman Allenby called the meeting to order.

SCHIP REAUTHORIZATION UPDATE

Lesley Cummings informed the Board that Ron Spingarn, Deputy Director of Legislative and External Affairs is in Washington, DC working with the Governor's DC office on the SCHIP reauthorization issue. She indicated she will be joining him later in the week to meet with California's congressional delegation about the urgency of California's situation.

Ms. Cummings reminded the Board of the present situation concerning federal funds for the current federal fiscal year (2008). Congress appropriated funds at the same level as for 2007 and authorized CMS to disburse sufficient funds to get states through November 16, 2007.

If SCHIP continues to be funded at the 2007 level, California will not have sufficient federal funding to operate the Healthy Families Program (HFP) at its existing levels. If the Board were to start reducing program costs to live within the 2007 funding level, it would have to freeze enrollment in December and begin disenrolling children whose Annual Eligibility Reviews (AER) occurred in December. The disenrollments would take effect December 31, 2007.

Another choice the Board could make is to continue to operate HFP at its existing levels and be prepared to shut down the program completely between July 1, and September 30, 2008 if the required funds did not become available.

Ms. Cummings indicated that staff is not asking for the Board to decide which way to proceed at this meeting. Staff suggest that the Board meet in early

December to assess how best to proceed—and early enough in the month that if the Board decides to proceed with disenrollment at AER, there is sufficient time to provide notice to families whose children would be disenrolled at the end of the month. Staff is asking the Board today to adopt emergency regulations that allow for these steps to be taken if the Board decides they are needed. If the regulations are adopted at today's meeting, it will take 30 days before they are in effect, despite the fact that they would be adopted on an emergency basis.

Mr. Figueroa asked the amount of the federal funding shortfall. Ms. Cummings replied that it is about \$250 million in federal funds, or 25% funding. Ms. Liu reiterated that it was essential for everyone to understand that at this meeting the Board was not establishing a waiting list or implementing a policy of disenrollment at AER. Instead, it is just assuring that tools are available to take these actions should they be necessary. She wants to assure that people don't misconstrue any action that may be taken today.

ADOPTION OF EMERGENCY REGULATIONS AUTHORIZING MRMIB TO ESTABLISH A WAITING LIST AND REQUIRE AER DISENROLLMENTS IF IT DETERMINES INADEQUATE FUNDING

Lesley Cummings informed the Board that staff revised the regulations from the previous draft presented at the October 24, 2007 meeting to clarify areas where public testimony indicated the regulations were unclear. Staff also has established a new structure that ensures Board decision-making prior to restrictions on enrollment, but provides flexibility to remove the restrictions quickly should funding become available. The regulations require that prior to establishment of a waiting list or implementation of a policy of disenrollment at AER, the Board makes a finding that there are insufficient funds to operate the program. It clarifies that the Board first establishes a waiting list and proceeds to disenrollments only if that action is also necessary. However, the regulations authorize the Executive Director, if funds become available, to terminate disenrollments and re-open the program to new enrollment. Staff's thinking is that closing enrollment should rise to the level of overt Board action while the Board would want staff to move with all deliberate speed to open to enrollment if adequate funding becomes available. Chairman Allenby agreed that the Executive Director should have that ability since the Board is not full-time.

Ms. Cummings then began to review the regulations in detail as they have been changed since the first presentation in October. Among other things, she noted that the regulations would place individuals on the waiting list based either on the date their initial application was received or based on the date of the AER disenrollment. Since disenrollments occur at the end of the month, they would constitute a sizeable addition to the list. Children would be enrolled based on the order of the waiting list when adequate funding is available. When funds become available, families would be contacted to provide updated information to complete an eligibility determination and then enrolled if eligible. Chairman

Allenby asked if any action is taken other than to put them on the waiting list. Ms. Cummings indicated that a screening occurs to see if a child is potentially eligible for the Medi-Cal Program. If they are, the application is sent on to the county for adjudication –although the child would also be placed on the wait list for HFP. Infants born to AIM women would be automatically enrolled in the program and they would not be subject to any possible disenrollment for 12 months, at the time of their AER. The regulations require that families receive fifteen (15) days notice of disenrollment, but it is staff's goal to provide greater notice where possible.

Dr. Chang commented that the waiting list would be a mix of newly applying children and children that had been disenrolled. Mr. Figueroa expressed concern that the process was not fair to current enrollees. He made an analogy to laid off employees. Usually when resources became available to rehire, laid off employees are given priority in the rehiring process. He indicated that for continuity of care and to show loyalty to the existing subscribers, he had asked the Executive Director to draft an alternative version of the regulations which give priority to disenrolled subscribers in the re-enrollment process when adequate funds become available. Chairman Allenby asked that staff distribute the alternate version to all attendees. He then asked the Executive Director if she had comments on the alternative. Ms. Cummings replied that it was very difficult to judge whether a child who has had no coverage has less of a need than a child who has been enrolled and has an identified medical need. Chairman Allenby indicated that either option was ugly. Board member Figueroa and Ms. Cummings agreed that it's all bad. Dr. Chang and Mr. Campana asked what would happen to children who were moving from Medi-Cal to HFP under the alternate version. Ms. Cummings replied that they would be considered new enrollees. She then asked Laura Rosenthal, Chief Counsel to review the alternate version with the Board which she did in detail. The biggest difference between the version proposed by staff and the alternate version requested by Mr. Figueroa is that until all disenrolled children are reinstated no new enrollees would be admitted.

Ms. Cummings noted that at the last meeting the Board had asked staff to explore whether or not it was feasible to establish an exception to AER disenrollments for children in CCS. The HFP benefit package provides that when a child has a CCS condition—and these are statutorily proscribed, but are generally fairly serious conditions requiring specialty care – the child receives the services through the county CCS program. Chairman Allenby noted that enrollment in HFP extends CCS to a number of children who would otherwise not be financially eligible for the program.

Staff worked collaboratively with the Department of Health Care Services (DHCS) to explore the possibility of a CCS exception. DHCS was very responsive and provided information in a very short time frame. However, Ms. Cummings concluded that implementing such an exception process would take

two to three months of operational development and would adversely impact any potential federal fund savings because of administrative costs for systems and vendor changes. Thus, staff was unable to include the exception in the regulations presented today.

Mr. Campana asked if an exception for children with chronic conditions might be possible. Ms. Cummings replied that until HFP has a functioning encounter/claims based system, MRMIB staff and MAXIMUS have no way of knowing which children had chronic conditions and which did not. If doing an exception for CCS seems infeasible, one for children with chronic conditions in the plan population would be even more daunting.

Chairman Allenby invited public comments on the draft emergency regulations.

Deena Lahn, Children's Defense Fund (CDF), acknowledged MRMIB staff and indicated that she is well aware that the staff wants the best for children in the program. However, CDF continues to oppose adoption of the emergency regulations. She expressed the need for additional time to consider the two regulatory options presented and further suggested that the Legislature should be involved in reviewing the options. She expressed concern about the CCS issue and the issue of children with other chronic health problems. She suggested that more consideration should be given to the idea of moving children onto Medicaid, noting that Ms. Cummings had told her that this was not a practical short-term solution because of the system changes that would be needed in Medi-Cal eligibility systems. She understands doing so would be difficult, but argued for additional time to assess the options. Perhaps children could remain where they are and be paid for by Title 19. If this were possible, children would still have coverage and the state would get the benefit of the 50% federal match. She recommended the Board wait to take action until November 16, 2007 so that it would have additional information on what had occurred at the federal level.

Angela Gilliard, Legislative Advocate for the Western Center on Law and Poverty, indicated that she had just provided a letter to Board members but did not have copies for MRMIB staff. Ms. Cummings noted that the public is supposed to have access to any document provided to the Board. It is advisable to provide copies in advance to staff so that copies can be made for the public. Ms. Gilliard noted that she would have to revise the letter after review of the newest version of the regulations and that she would be sure to get a copy to staff in advance.

Ms. Gilliard noted that the Board and staff are grappling with a problem not of their own making and understands that the Board does not control the funding from the federal government. She echoed Ms. Lahn's comments about the respect for the work done by the Executive Director and staff. However, she indicated that they had legal concerns about the Board's authority to disenroll

children from the program. She did think the Board has authority to limit new enrollment but that disenrolling is another type of action altogether. She indicated that she had found staff's description of the circumstances under which a child is placed on a waiting list and taken off to be confusing. She thought that families would find it extremely confusing, particularly if one child in a family is in a different status than another. She argued that stability in enrollment is better for the consumer and for continuity of care. She noted that the present policy environment was like a time warp because recently she was testifying on health care expansion with the ongoing health care reform efforts but today is discussing possibly limiting enrollment and disenrolling children. She felt that the Legislature needed to be involved in the conversation and that they can move quickly in an emergency. She asked that the Board take no action on the regulations today, suggesting that taking action sends a message to Washington DC that we have no fight left in us.

Michelle Wood, Community Health Councils (CHC), acknowledged that CHC shares the Board's concern on the impact of the delayed SCHIP reauthorization. However, she asked the Board to not act prematurely and allow sufficient time for further federal negotiations on SCHIP. She concurred with others that doing so sends the wrong message to Washington, DC especially as California has been trying to expand children's health coverage. And whether or not the Board adopts the regulations at this meeting, she expects that the Board will explore all possible alternatives publicly. She referenced a letter sent to the Board on November 1st which outlined some of the options that should be reviewed. These included looking at all SCHIP funded programs, exploring either the State or Medi-Cal absorbing some of the program costs, and having staff establish criteria for evaluating policy options. The criteria should include policies to maximize the number of children currently enrolled and retained in the program, maximizing and leveraging available funding resources, minimize disruption of services, minimize loss of benefits and timeline under which staff would exercise any of the policy options. She also expressed concern on how the waiting list would be prioritized and stated that while she had not had the opportunity to review the versions discussed today, the changes appeared to be a step forward. She indicated that staff should review exceptions used by other states and improve the process before taking action.

Dr. Chang commented that the Board is in an abhorrent situation. She wanted the audience to clearly understand that any delaying action is a gamble that could increase the number of impacted children whose coverage will be disrupted and potentially shutting down the program abruptly. There is a trade off that could hurt a larger number of children at a future point in time. This is the issue she is grappling with and she asked speakers for their comments on it.

Michelle Wood sympathized with the dilemma. However, she believes that the state has more options than just those being advanced in the emergency regulations. The Board should hear about the other options available and weigh

them as well. Ms. Lahn commented that staff had made some excellent changes to the emergency regulations since the last meeting. While she has not had the opportunity to formally review them, she discerns that a number of changes were in response to public testimony at the last meeting. This illustrates that despite the tight timeframe, improvements can be made. She indicated that they are not asking the Board to wait forever and they do understand the Board's responsibility to be fiscal stewards of the program. She indicated the Board should wait until November 16, 2007 to see what funding comes to pass and that it would probably not be flat funding. And meanwhile staff should be reviewing the other options. Ms. Gilliard recommended that the Board wait until they could engage the entire Legislature and possibly the Governor, so that the state's entire resources were available to address the problem. She has seen examples where the state has worked through historic budget deficits with collaboration between the Administration and the legislators. She indicated that members of the State Legislature could be quite dismayed if they didn't have the opportunity to help with a solution.

Ms. Liu commented that a number of speakers have discussed the message to Washington DC. She thought that whatever action is taken by the Board is one that is sending a message to Washington about the consequences of action or inaction –and that these need to be taken very, very seriously by Washington. She indicated that Board member Chang outlined the predicament the Board is in very well and that waiting too long is a real gamble in that it could close down the whole program which no one wants; and she is opposed to disenrolling some children. She also emphasized that today's action was only to provide the Board the authority and tools to act, if necessary. The Board was not taking any action today to establish a waiting list or to disenroll children.

Erin Aaberg Givans, Children's Specialty Care Coalition, accompanied by Tim Shannon indicated that they are still hanging on to the dream of universal coverage for children. She asked the Board not to start down this path at this time and supported previous speakers who have requested further consideration of avenues for the Legislature to intervene. She estimated that 7,000 of the 23,000 HFP CCS children would be at risk of losing their CCS coverage if disenrolled. This could be in the middle of chemotherapy, life-saving heart surgery or diabetes treatment. She recommended a triage process if there is action taken to disenroll children. Tim Shannon, Children's Specialty Care Coalition, thought it an unintended consequences that when you disenroll HFP children that these 7,000 HFP CCS children would also be impacted. While regulations are being adopted and no other action is being taken today, the regulations set forth the process and if no consideration for prioritizing CCS is included, then they will also be disenrolled. He recommended additional time to look at other options.

Cherie Fields, LA Care, echoed comments made by Deena Lahn and Angela Gilliard. She expressed concerns that the regulations may be a bit premature

until we know what action is taken by Congress on November 16, 2007 and at what funding level. She asked for an additional 30 days to vet the emergency regulations to fine tune them with MRMIB staff.

Beth Abbott, Health Access, indicated that she represents 200 consumer groups for quality/affordable health care for all and previously was a CMS legal administrator for ten years. She expressed concerns whether or not this is the right and proper action to take at this time. She complimented MRMIB staff that public comments were taken into account between the October 24, 2007 and today's meeting but would like to have additional time to review revised regulations. She also indicated that this is something that would be best handled by the Governor and Legislature. She cited how the State stepped in to fill the gap when the federal government clumsily implemented Medicare Part D as an example. She felt other policy alternatives should be explored and requested a little more time for considering other options such as what other states have done in similar circumstances.

Chairman Allenby then asked Ms. Cummings to review the flexibility the revised emergency regulations provide the Executive Director to minimize any negative impacts on HFP children. She explained that the revised structure allows the Executive Director to respond quickly to undo any wait list or disenrollment actions taken, if additional funding becomes available. She believes adopting these regulations today sends the message to Congress that immediate action is needed to address states funding needs for the present federal fiscal year. She indicated that the Board would not be considering any implementations of the regulations until around December 5, 2007. If California knew its allocations for the current fiscal year sooner the state would have had time consider other options in addition to the current proposal. However, that did not occur, and the present fact is that in the second month of the fiscal year, California does not have a final allocation of funds and federal action to date indicates that funding will be at 2007 levels. And 2007 funding levels mean a federal funding shortfall of \$260 million in the current fiscal year. The lateness of final federal action on funding limits states' choices. In California's case, the Board can gamble that needed funding comes through --with the possibility of shutting down the program entirely on July 1, 2008 if it does not. Or, the Board can presume 2007 level funding. Implement the, 2007 wait list and disenrollments and allow the Executive Director to re-open enrollment if the needed funding is provided. It is important for the Governor and Legislature to be involved in developing options for the future but there are very limited options for the present. It is critical that Congress understand the urgency of California's situation and that is why Ron Spingarn is in Washington DC communicating that message. There are twenty one SCHIP states in similar predicaments. In this environment, it is important to send the message to Congress that their failure to act has consequences and twenty one states are in critical condition. Chairman Allenby indicated that the reason the twenty one states are in critical condition is because those states got on board the SCHIP early and aggressively began providing health coverage for

kids. Ms. Cummings noted that California has built a very successful program and enrollment is growing as strongly as anytime in the previous ten years. She also stated staff's unhappiness being in this situation and its distaste in having to develop the emergency regulations for this purpose. She knows that the Board hates having to consider the regulations. Chairman Allenby commended staff on the good work and the many hours put into this unpleasant task but stated it had to be done.

Chairman Allenby moved the adoption of the alternate version of the emergency regulations. Board member Figueroa seconded the motion. Board members Figueroa and Chang, and Chairman Allenby voted Aye. Chairman Allenby noted the adoption of the emergency regulations, much to the Board's chagrin.

HEALTHY FAMILIES PROGRAM UPDATE

Janette Lopez, Deputy Director of Eligibility, Enrollment and Marketing, provided an update on actions taken to assist victims of the recent southern California fires. The HFP has extended coverage for subscribers that were scheduled for disenrollment in October and November in the seven impacted counties in southern California in accordance with the Governor's executive order. The disenrollment process in those seven counties will return to normal at the end of December 2007. Board member Figueroa, Ex Officio member Campana and Chairman Allenby expressed their appreciation for staff's action to assist families whose lives have been disrupted by the fires. Ms. Lopez acknowledged the responsiveness of MAXIMUS, HFP Administrative Vendor, in its ability to implement these changes quickly to assist the impacted families. Chairman Allenby indicated that we have a good vendor. He then adjourned the meeting.

Adjourned